



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 09/613,339  
Filed: July 10, 2000  
Inventor:  
Nobuyoshi Morimoto

Title: System and Method for  
Negotiating Improved  
Terms for Products and  
Services Being Purchased  
Through the Internet

§ Examiner: Elisca, Pierre E.  
§ Group/Art Unit: 3621  
§ Atty. Dkt. No: 5596-00300  
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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date indicated below.

Robert C. Kowert

Name of Registered Representative



July 25, 2006

Signature

Date

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

**Mail Stop AF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicant requests review of the Examiner's rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated below.

Claims 1-44 remain pending in the application. Reconsideration of the present application is earnestly requested in light of the following remarks. Please note that for brevity, only the primary arguments directed to the independent and some of the dependent claims are presented, and that additional arguments directed to the subject matter of others of the dependent claims, will be presented if, and when, the case proceeds to Appeal.

The Examiner rejected claims 1, 3-7, 9-31, 32-35 and 37-44 under 35 U.S.C. § 102(e) as being anticipated by Schmid (U.S. Publication 2002/0029188) and claims 2, 8, 31 and 36 under 35 U.S.C. § 103(a) as being unpatentable over Schmid in view of Andrews (U.S. Patent 6,285,986). Applicant respectfully traverses these rejections for at least the following reasons. Applicant submits that the Examiner has failed to provide a

*prima facie* rejection of each of the independent claims. Applicant notes the following clear errors in the Examiner's rejection.

Regarding claim 1, Schmid fails to disclose **detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased using an Internet web site and in response to said detecting making an offer to said purchaser to accept or reject a contract for negotiating said improved terms within a specified time.** The Examiner cites the Abstract and paragraphs [0008], [0014], [0017] and [0024 – 0031] of Schmid. However, Schmid fails to disclose anything regarding detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased using an Internet web site and in response to said detecting making an offer to said purchaser to accept or reject a contract for negotiating said improved terms within a specified time. In contrast, Schmid teaches a method for negotiating loans on behalf of a borrower in which a plurality of lenders are invited to submit quote. The borrower selects quotes from the responses and the corresponding lenders are invited to take part in a final quote event in which the best terms from the responding lenders are displayed to the lenders and each lender is invited to improve their corresponding quote. *See, e.g.,* Schmid, Abstract and paragraph [0008]. **Schmid is not concerned with and does not disclose detecting a commitment to purchase a product or service being purchased using an Internet web site, as recited in Applicant's claim.** Instead, Schmid teaches a system in which potential borrowers may select from among multiple loans being offered by lenders.

In contrast to Schmid, Applicant's claimed invention relates to offering a purchaser a contract to negotiate improved terms for a product or service that the purchaser has committed to purchase with associate terms using an Internet web site. For example, once a purchaser has made a decision to buy a specific product or service over the Internet, the purchaser may use the services of a broker-agent program to attempt to beat the specific price within a specifiable time window, in one embodiment described in Applicant's specification.

**Schmid's system does not involve detecting a commitment to purchase a product or service using an Internet web site, and making an offer to the purchaser to accept or reject a contract for negotiating improved terms for the product or service being purchased, as recited in Applicant's claim.** The borrower of Schmid's system has only committed to using Schmid's loan-finding service to obtain a loan. However, Schmid's system does not offer a contract to the potential borrower to negotiate improved terms for using Schmid's loan-finding service. Providing an electronic forum in which a potential borrow may view and select from multiple lending offers does not disclose making an offer to a purchaser to accept or reject a contract for negotiating improved terms for a product or service being purchased over the Internet in response to detecting an issuance of a commitment to purchase the product or service using an Internet web site.

Similar remarks as discussed above in regard to claim 1 also apply also to independent claims 14, 28, 29, 40, 41, 42, and 44.

In regard to claim 14, Schmid fails to disclose a computer program executable on a client computer system by a purchaser to connect with the web site server and detect an issuance of a commitment to purchase with associated terms for said product or service, and a web site server operable to: receive a notification about said issuance of said commitment to purchase, and in response to receiving said notification, make an offer to said purchaser to accept or reject a contract for negotiating improved terms within a specified time. Schmid does not disclose a client computer and website server that perform the specific respective functions recited in claim 14. **Moreover, Schmid does not disclose, that the website server is operable to, in response to the purchaser accepting the offer: conduct a search for the improved terms within the specified time; receive the improved terms with the specified time; and execute the contract.** In fact, Schmid does not even disclose the purchaser accepting an offer for a contract for negotiating improved terms for a product or service being purchased over the Internet with a specified time.

None of the Examiner's citations refers to a buyer accepting an offer for a contract for negotiating improved terms for a product or service being purchased over the Internet within a specified time. Presumably, the Examiner is relying on the borrower in Schmid's system accepting one of the loan offers (paragraph [0046]). However, none of the loan offers can be considered a offer to accept or reject a contract for negotiating improved terms for product or service being purchased over the Internet within a specified time. Nor can the Schmid's teaching regarding a potential borrower executing the Exclusive Engagement Agreement be considered to disclose the purchaser accepting an offer to accept or reject a contract for negotiating improved terms for a product or service being purchased over the Internet within a specified time (paragraph [0024]). Schmid's Exclusive Engagement Agreement is a contract with a company providing the Schmid's loan-finding service. Moreover, the Exclusive Engagement Agreement is clearly not a contract for negotiating improved terms for a produce or service being purchased over the Internet. Instead, the Exclusive Engagement Agreement is a contract to use the interactive on-line, real time bidding model of Schmid's invention to potentially accept a loan. When a potential borrower executes Schmid's Exclusive Engagement Agreement, nor product or service is currently being purchased over the Internet except the actual Exclusive Engagement Agreement itself.

In further regard to claim 29, Schmid fails to disclose offering the purchaser an opportunity to enter into an alternative contract in which the purchaser agrees to wait a predetermined amount of time in exchange for a possibility of securing a better price for said particular item or service. **The Examiner has not made any arguments, nor cited any passage of prior art, regarding this limitation of claim 29.** Instead, the Examiner has merely listed claim 29 with the rejection of claim 1, even though claim 1 and claim 29 recite different limitations. **Therefore, the Examiner has not stated a *prima facie* rejection for claim 29.** Moreover, there is no description in Schmid that discloses offering a purchaser an opportunity to enter into an alternative contract in which the

purchaser agrees to wait a predetermined amount of time in exchange for a possibility of securing a better price for a particular item or service.

Furthermore, the cited art fails disclose if said better price is found before said predetermined amount of time expires, purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between said particular price and said better price. Again, the Examiner has not made any arguments, nor cited any passage of prior art, regarding this limitation of claim 29. Instead, as noted above, the Examiner has merely listed claim 29 with the rejection of claim 1. There is simply no description in Schmid regarding purchasing an item at a better price and charging the purchaser a price between the better price and the particular price. Schmid's system for allowing a potential borrower to select from among multiple loans has no relevance with making such a purchase at a better price and charging the purchaser a new price between the better price and an original price. Similar remarks apply also to claim 41, which includes also this limitation.

In further regard to claim 41, Schmid fails to teach or suggest automatically delaying the purchase for a predetermined amount of time. Once again, the Examiner fails to cite any portion of the cited art that mentions anything regarding automatically delaying a purchase for a predetermined amount of time. **In fact, the Examiner has completely ignored this limitation of claim 41 and has, instead, merely listed claim 41 with his rejection of claim 1.** Schmid's loan competition system has nothing to do with delaying a purchase while a search is conducted for better terms.

In further regard to claim 44, Schmid further fails to anticipate, teach, or suggest in response to detecting an action by a purchaser that indicates that the purchaser is making an original purchase for a particular item or server of the Internet for a particular price, accessing a broker-agent web site for seeking a better price for the particular item or service within a predetermined amount of time. Once again, the Examiner fails to cite any portion of the cited art that mentions anything regarding accessing a broker-agent web site for seeking a better price. **In fact, the Examiner has completely ignored this limitation of claim 44** and has merely listed claim 44 with his rejection of claim 1. In the loan competition system of Schmid, a list of potential lenders is prepared and a potential borrower selects from among them. Schmid's system does not include accessing a broker-agent web site in response to detecting an action by a purchaser that indicates that the purchaser is making an original purchase for a particular item or server of the Internet for a particular price. There is nothing about Schmid's system that discloses seeking a better price for a particular item or service by accessing a broker-agent web site. Moreover, since the Examiner has not mentioned either of the limitations discussed here in his remarks, he has failed to state a *prima facie* rejection for claim 41.

For at least the reasons above, the Examiner has **failed to provide a prima facie rejection of each of the independent claims.**

The Examiner has also failed to mention or cite any prior art to support his rejection of many of the limitations of the dependent claims. For example, the Examiner

includes no remarks regarding the specific limitations of claims 2 - 9, 10, 11, 12, 13, 30, 35, 37, 38, 39, 40 and 42.

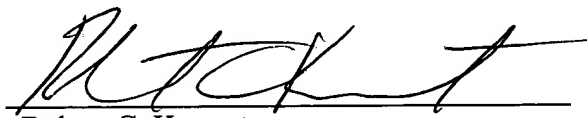
For at least the reasons presented above, the Examiner's rejection is not supported by the prior art and removal thereof is respectfully requested.

In light of the foregoing remarks, Applicant submits the application is in condition for allowance, and notice to that effect is respectfully requested. If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicant hereby petitions for such extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5596-00300/RCK.

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☒ Notice of Appeal

Respectfully submitted,



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Reg. No. 39,255

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Date: July 25, 2006